

REMARKS

Applicant respectfully thanks the Examiner for allowing Applicant the interview on April 14, 2006. During the interview, the Examiner's outstanding objections and rejections were discussed, as well as Applicant's claims. Applicant thanks the Examiner for the helpful guidance regarding the claims. Pursuant to the discussion with the Examiner, Applicant has amended the independent claims to focus on a feature of these embodiments that the supports may become non-parallel during compression of the compression body in order to augment or replicate the function of a native disk.

Applicant respectfully directs the Examiner's attention to paragraph [0013] and [0046] of the specification and claim 98 as originally filed, all of which focus on a feature of Applicant's claimed embodiments, namely that Applicant's device replicates or augments the function of a native disk. For the Examiner's understanding, the function of the intervertebral disk is to provide support, absorb shock, allow for movement, and resist excessive movement. The disk allows for movement in forward-bending, backward-bending, lateral bending and rotation (Benzel, Edward C., (2001) *Biomechanics of Spine Stabilization* (textbook) Publ. Thieme 2001, pp 6-8.)

On page 2 of the Office Action, the Examiner made various comments relative to Applicant's election and restriction. Applicant respectfully requests that, if this Amendment puts the application in condition for allowance, Applicant be permitted to amend the non-elected species to depend from an allowable generic or linking claim.

Applicant has amended the drawings as shown to reflect the part number 16a that is referred to in paragraph [0042] of the specification. This Amendment does not introduce new matter.

On page 2 of the Office Action, the Examiner objected to the specification and Abstract. Applicant has amended the Specification and Abstract as shown and believes they are now in good form.

On pages 3 and 4 of the Office Action, the Examiner objected to the claims for various reasons. Applicant has amended the claims as shown and believes that they are now in good form. Applicant has made a thorough review and believes it has corrected the claims to clarify any inconsistencies or terminology. The Examiner's helpful suggestions in this regard are appreciated.

On pages 4 – 5 of the Office Action, the Examiner rejected claims 1-4, 6-13, 16-22, 26-34, 37-42, 45-57, 60, 61, 64-77, 80-85, 88-94, 98 and 99, under 35 USC §102(b) as being anticipated by Navas (US 5,375,823). For the reasons mentioned below and in view of the claims as now presented, Applicant believes that these claims are not anticipated by Navas.

Navas discloses a damper of the type comprising elements for progressively resisting, in exponential manner, the advance of a piston under the effect of a force of axial compression, which functions as a stop opposing any displacement of the piston beyond a predetermined value, in an intervertebral stabilization device.

Note in Fig. 4 of Navas and the language at Column 2, lines 16 – 20, that the height of piston 3 is large with respect to the length of the cylinder 1, so as to assure good guiding of the piston in the bore 12 of the cylinder when the piston moves in the bore. Applicant respectfully notes that what the Examiner considers to be the supports in the Navas reference remain parallel throughout movement of the vertebrae and that the Navas reference moves axially along the axis of the piston, but does not appear to simulate, replicate or augment a function of a native disk in that it does not permit, for example, tilting or rotation of the vertebrae relative to each other because the supports do not tilt or do not rotate relative to each other and therefore do not replicate, augment or simulate the function of a native disk as recited in Applicant's claims.

Applicant has amended its independent claims as shown to further focus on various features of various embodiments which is that the artificial disk and method replicates or augments the function of a native disk and permits the vertebrae to move naturally similar to a native intervertebral disk. In claim 1, for example, the first and second supports move such that they become non-parallel during use. In contrast, the Navas device, as understood, is a piston and the planar members in Navas appear to stay parallel during actuation. As mentioned earlier, Applicant's device augments or replicates a function of the native intervertebral disk because it permits the supports to move non-parallel relative to each other during actuation or compression of the compression body. This permits the vertebra to which the supports are attached to move likewise.

On page 5 of the Office Action, the Examiner rejected claims 5, 14, 15, 35, 36, 43, 44, 78, 79, 86, 87 under 35 USC § 103(a) as being unpatentable over Navas. For the reasons mentioned earlier herein, in view of the claims as now presented and also for the following reasons, Applicant respectfully believes that these claims are not unpatentable over Navas.

Applicant can find no teaching in Navas which suggests that there be provided an angular offset with respect to the spine. In fact, it appears from Fig. 4 and the language at Column 2, Lines 46 – 48, the device of Navas functions only in the direction of compression, that is, when a force is applied to bring ball joints 11 and 31 closer together. Note also the language at Column 3, Line 36 – 40 that the device functions in parallel as the disks separate the two vertebra. There is no suggestion or suggestion of any angular relationship and the Navas reference appears to teach away from such suggestion. Applicants are unclear how the device would function if the Navas piston and supports do not function in parallel as shown.

Accordingly, for these reasons and the reasons mentioned earlier herein and in view of the claims as now presented, Applicant believes that these claims are not unpatentable over Navas and should be allowed.

The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to **Deposit Account No. 50-1287**. Applicant hereby provides a general request for any extension of time which may be required at any time during the

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prosecution of the application. The Commissioner is also authorized to charge any fees which have not been previously paid for by check and which are required during the prosecution of this application to **Deposit Account No. 50-1287**. (Should Deposit Account No. 50-1287

be deficient, please charge any further deficiencies to Deposit Account No. 10-0220.)

Applicant is filing concurrently under separate cover a request for a one month extension of time.

Applicant invites the Examiner to contact the undersigned via telephone with any questions or comments regarding this case. **Applicant respectfully requests a second interview with the Examiner if this Amendment does not place this case in condition for allowance.**

Reconsideration and favorable action are respectfully requested.

Respectfully submitted,

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